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TESTIMONY
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
SECOND DISCUSSION DRAFT OF LEGISLATION REGARDING OFF-RESERVATION INDIAN GAMING

WASHINGTON , D.C.
NOVEMBER 9, 2005

Good morning, Chairman Pombo and members of the Committee. My name is Ron Suppah and I am Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs" or "Warm Springs Tribe"). I am appearing today to express our Tribe's very serious concerns with the second discussion draft of legislation regarding off-reservation Indian gaming. As explained in further detail in our testimony, Warm Springs believes that the second discussion draft, if enacted into law, would unfairly terminate our Tribe's very costly and years' long effort to pursue vitally necessary financial self-sufficiency through a gaming facility on our aboriginal, Treaty-reserved lands in a small, rural community that shares our hope for future economic security.

INTRODUCTION

The Warm Springs Tribe is now engaged in the process of seeking federal approval of a tribal gaming facility at a location within our Treaty ceded lands 38 miles from our Reservation and 17 miles from a parcel of Warm Springs trust land that is eligible for gaming. Our actions are based on unique circumstances, and we are well along in the process. In our efforts, all the parties have been diligent, open and fair, and have scrupulously abided by all established laws and guidelines. Although we do not know whether we will succeed in this effort, we believe we have been following a model process for pursuing gaming on after-acquired land and ask that, as the Resources Committee considers the second discussion draft, you make appropriate changes to the draft to allow us to complete the process as it is currently written.

The process we are following is set out in Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA). It is a demanding process successfully used only three times in the past 17 years. To establish gaming facilities on lands taken into trust after IGRA's enactment, Section 20(b)(1)(A) requires the state governor's concurrence in the Secretary of Interior's "two part determination" that the proposed tribal gaming operation would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community.

The second discussion draft would almost certainly deny our Tribe the opportunity to establish a gaming facility on new trust lands because it is very unlikely Warm Springs will be able to have our Compact "in effect" by the draft's date of enactment, nor will our Tribe, which has had a government-to-government relationship with the United States since our Treaty of June 25, 1855, qualify within the limited exception for "newly recognized, restored, or landless" tribes on that date.

Not only does the second discussion draft eliminate this Sec. 20(b)(1)(A) process, it makes no effort to allow a tribe like ours, which has spent millions of dollars of the tribe's own money and spent years diligently pursuing the Sec. 20(b)(1)(A) process, to complete the process. Instead, as we near the end of the process and move close to the Secretary's "two-part determination" and the Governor's concurrence, the second discussion draft would change the rules at the eleventh hour by almost certainly terminating our Tribe's efforts upon the date of the draft's enactment.

Before examining the second discussion draft in more detail, I would like to provide some background on the dire financial circumstances that have led us to pursue this project, how we gained the support of Oregon's Governor and the local community for the project, and the costly and time-consuming efforts we have been making to pursue the project to this late stage in the existing IGRA process.

DECLINING TRIBAL ECONOMY

Warm Springs Background

The Warm Springs Indian Reservation is a beautiful but remote expanse of 650,000 acres in north Central Oregon. The Warm Springs Reservation is almost entirely trust land and, as the only reservation in Oregon excluded from Public Law 280, 67 Stat. 588 (1953), the Tribe is the governmental entity primarily responsible for public safety and other essential governmental services on the reservation. For many years, the Warm Spring tribal government has relied on timber and hydroelectric revenues to support governmental services to our more than 4,400 enrolled members. But in recent years, these revenues have declined and have been insufficient to meet our governmental needs.

Declining Tribal Revenues

The dramatic decline in our timber revenues illustrates the problem we are facing. In 1994, timber revenues contributed \$23.8 million toward our total tribal revenues of \$37.6 million. By 2002, timber revenue had plummeted to just \$5.7 million, bringing total tribal revenues down to \$25.3 million. Thus, over this recent eight-year period a 74% drop in tribal timber revenue resulted in a 33% decline in total tribal revenues.

The long-term outlook for timber income continues to be pessimistic as our tribal forest resource adjusts to conservative sustained yield forest management practices and the national and global wood products markets continue to remain depressed. As a result, the decade-long decline in the Tribe's revenue picture is projected to only worsen in the years ahead. Tribal revenue projections show 2002 actual revenues of \$25,594,000 declining steadily to 2011 forecasted revenues of just \$19,404,000. The Tribe's cash flow forecasts show that, beginning next year in 2006, operational expenditures are likely to exceed revenues. This means the Tribe will be required to dip further into its Revenue Reserve ("Rainy Day") Fund, just to try to provide minimum governmental services to the tribal members and reservation residents. Eventually, if this situation is not changed by significant new revenues, the reserve fund will be exhausted forcing the Tribe to make truly draconian cuts in services and employment. Indeed, such cuts are proposed for the 2006 tribal budget currently under review by the Tribal Council.

Consequences

As tribal revenues decline over time, essential services and needs go unmet and additional needs accrue. In addition, while essential governmental needs go unmet, tribal enterprises are deprived of capital to grow their enterprises and provide on-reservation job and training opportunities. Because of the shrinking job base and high unemployment, a sizable portion of the reservation population depends entirely on federal and tribal social service programs, which have experienced budget cuts in each of the last ten years.

As the Tribe's membership grows and its revenues decrease, needs continue to go unmet and increase in number and magnitude. This is an unsustainable cycle that the Tribe seeks to remedy with revenues from the Cascade Locks gaming facility. Increased tribal income is needed to provide services and infrastructure to help reverse this negative trend, especially in the areas of education, health care and economic opportunity programs.

CASCADE LOCKS GAMING PROJECT

Our Current Casino

In an effort to address this growing financial crisis, in 1995 the Tribe opened a small Class III casino on the reservation as part of the Tribe's existing Kah-Nee-Ta Resort. However, the Kah-Nee-Ta casino is isolated from Oregon's major population centers, and its revenues have done little to span the growing gap between our Tribe's income and our governmental requirements. As a result, our tribal budgets have continued to decline and we have been forced to cut services as well as draw upon our limited emergency reserve funds.

Under the terms of our Compact with Oregon's Governor, we are required to close the casino at Kah-Nee-Ta if we open a facility at Cascade Locks.

The Columbia River

To address the Tribe's increasingly difficult financial circumstances, in the late 1990s we conducted a survey of potential alternative gaming sites, and in 1999 the tribal membership approved a referendum by a wide margin directing the Tribal Council to pursue development of a casino on our traditional lands along the Columbia River. We initially focused on a 40 acre parcel of pre-IGRA tribal trust land, which is eligible for gaming, on a wooded hillside overlooking the Columbia River just outside the City of Hood River, Oregon.

Since time immemorial, the Columbia River has been the home of our people. Its salmon, eels and other foods have nourished untold generations, and when we agreed in our 1855 Treaty to move from our traditional homes along the Columbia River and its Oregon tributaries to our current reservation south of the Columbia, our forefathers were careful to reserve our rights to continue to fish on the river as well as hunt, graze and gather traditional foods throughout our Treaty ceded lands. Fishing on the Columbia River remains at the core of our culture, and many of our people continue to fish today for ceremonial, subsistence, and commercial purposes. Indeed, many of our tribal members live year-round on the Columbia's banks, and thousands of acres of individual Indian and tribal trust allotments are scattered along the Columbia.

Hood River and Cascade Locks

As the Tribe moved forward with preparations to develop a casino on the Hood River trust land, the City of Hood River and others in the area expressed concerns about locating a casino there. At that time, 1998 and 1999, the struggling community of Cascade Locks, Oregon, seventeen miles to the west, approached the Tribe about the possibility of locating a facility in the mostly vacant Cascade Locks Industrial Park, which was created in the 1970s along the banks of the Columbia River out of fill material from construction at nearby Bonneville Dam. The Cascade Locks site is within the Tribe's Treaty ceded lands along the Columbia River in which Warm Springs holds federally protected off-reservation treaty reserved fishing, hunting and gathering rights. The Cascade Locks site is also within the area determined by the Indian Claims Commission in *Confederated Tribes of the Warm Springs Reservation of Oregon v. United States* (Docket No. 198) to be CTWS aboriginal lands exclusive of the claims of any other tribe or tribes.

Shifting the Tribe's Columbia River casino development plans from the gaming-eligible Hood River site to the Cascade Locks Industrial Park site will be beneficial for both the Cascade Locks and Hood River communities as well as the State of Oregon. Cascade Locks, like our Tribe, desperately needs an economic boost. Developing a casino at the Cascade Locks Industrial Park preserves the pristine and undeveloped Hood River trust lands, thus alleviating Hood River's concerns about a casino in their community. Forgoing development of the Hood River trust lands also means the trust land's scenic values will be retained and the land, otherwise exempt from State and federal Columbia River Gorge National Scenic Area Act restrictions, will be managed consistent with an adjacent Oregon State Park.

The Compact and Other Agreements

Informing the Oregon Governor's Office and the Department of the Interior of the Tribe's intention to develop a casino at the Cascade Locks site in lieu of the Hood River trust lands site, in 1999 the Tribe initiated what became years-long discussions with Cascade Locks and the State that resulted in a series of agreements signed earlier this year between Cascade Locks, the Tribe and the State. These agreements include a Class III gaming Compact with the State, a separate agreement with the State regarding preservation of the Hood River trust lands and a Memorandum of Agreement with the City of Cascade Locks and Hood River County addressing impacts of the casino on the local community. Our approach of entering into these agreements before taking the land into trust for gaming was intended to address any local concerns about developing a casino in the Cascade Locks Industrial Park and to secure the Governor's commitment to concur in the Secretary's two-part determination pursuant to Section 20(b)(1)(A) based on the Tribe's obligations regarding environmental protection, working conditions, the Community Benefit Fund and revenue sharing as set out in the Compact. This approach has led to near unanimous acceptance of the Cascade Locks site, as indicated by the thirty-two federal, State and locally elected officials who have endorsed and embraced the Cascade Locks site in an April 29, 2005 letter to Interior Secretary Norton.

Regarding the Compact, in March of 2004, we entered into formal negotiations with the State that concluded over a year later when the Governor and the Tribe signed the Compact on April 6, 2005. The

Compact is unusually comprehensive and fair, and is supported by the local counties, nearby cities and towns in Oregon and Washington, Congressman Greg Walden who represents Cascade Locks and Hood River, and State legislators from the area, in addition to the Governor, Cascade Locks, and our Tribe. The Compact provides the public in Oregon and Washington with an advanced notice of the environmental benefits to Cascade Locks and nearby Columbia River Gorge communities should the contingency of taking the Cascade Locks land into trust become a reality. Specifically, approximately 40 acres of tribal trust lands near Hood River would be perpetually protected against development; an additional 175 acres of adjacent scenic Columbia River Gorge lands currently owned by our Tribe would be perpetually protected and conveyed to the Oregon State Parks Division; environmental protection, energy efficiency and sustainable building standards would define and control our casino/resort development; and millions of dollars from a tribally established Community Benefit Fund would be used to protect and enhance the Columbia River Gorge National Scenic Area. The Compact also provides very significant benefits to the State as a whole through revenue-sharing payments of up to seventeen percent of the casino's annual "net win" to a Warm Springs Tribe/Oregon Benefit Fund to be used primarily for college scholarships as well as for protection of the Columbia River Gorge and for economic development projects throughout Oregon.

Compact Disapproved by Interior Policy Change

On April 8, 2005, the Tribe and the Governor submitted the Compact to the Secretary of the Interior for the 45-day review provided under IGRA. As usual, the Secretary's review team asked for clarification regarding several sections of the Compact. When the Governor and Warm Springs submitted a response, we requested a meeting to go over the questions and responses. On the afternoon of May 17, four days before the end of the 45 day review period, we met with personnel from the Office of Indian Gaming Management, the Secretary's Office and the Solicitor's Office. In the meeting, we proceeded through our responses to the Department's questions, and while not all issues were resolved, there were no significant objections. Then, in the final ten minutes of the meeting, the Director of the Office of Indian Gaming Management informed us that the Secretary's Office had a fundamental concern about approving the Compact before the land was taken into trust, and was considering whether to disapprove the Compact on that basis.

The Tribe and the Governor's Office filed written responses within two days noting that we had acted in good faith on Interior Department representations that doing the Compact first was acceptable, that the Compact specifies it becomes effective only when the subject land is taken into trust for gaming, and that IGRA does not require that the land be in trust at the time the Compact is approved. We also noted that the Secretary has, in the past, approved a number of compacts before the subject land has been taken into trust for gaming. Unfortunately, two days later, the Department disapproved our Compact due to the new procedural requirement, previously unknown and unpublished and representing a reversal of previous practice, interpreting IGRA Section 11(d)(8)(A) to require that land must be in trust for gaming before the Secretary will consider the related compact. The Secretary's letter noted it does not address any element of the Compact other than that regarding procedural sequence.

Land into Trust Request

Coming at the 11 th hour of our Compact's consideration, the Secretary's surprise policy announcement of course disappointed us. However, as a result of this decision, and as recommended in the Secretary's disapproval letter, we are proceeding forward with our application to take the land into trust under 25 C.F.R. Part 151 and IGRA Section 20(b)(1)(A). On April 8, 2005 the Tribe formally submitted Tribal Council Resolution No. 10,500 to the BIA's Northwest Regional Office and to the BIA Office of Indian Gaming Management in Washington, D.C. requesting the initiation of land-into-trust proceedings for the Cascade Locks casino site. The request seeks 25 acres in the Cascade Locks Industrial Park to be taken into trust for the proposed casino and accompanying hotel. Once that process is completed, we will resubmit the Compact for the Secretary's 45 day review.

IGRA Section 20 "two-part determination"

On June 15, 2005, the BIA Northwest Regional Office initiated the Secretarial "two-part determination" pursuant to IGRA Section 20(b)(1)(A) by sending our Tribe a consultation letter requesting information and responses to thirteen specific questions. At the same time, BIA Northwest Regional Office solicited information and responses from appropriate State and local officials, nearby Indian tribes, and surrounding communities regarding the Cascade Locks project. On August 15, 2005, as that comment period concluded, Warm Springs formally submitted our 45-page response, with hundreds of pages of supporting exhibits.

National Environmental Policy Act (N.E.P.A.)

Having completed the Compact agreement with Oregon's Governor and having executed agreements with the local governments to accommodate impacts, and pursuant to our April 8, 2005 land-into-trust application, we have moved into the very costly N.E.P.A. environmental review process required by the BIA's decision on our fee-to-trust application. The process will generate a full environmental impact statement (EIS), and not just an environmental assessment. From September 15, 2005 to September 28, 2005, the BIA Northwest Regional Office hosted five public scoping meetings on the EIS, with meetings in Hood River, Cascade Locks, Portland, and Stevenson, Washington. The scoping comment period concluded October 15, 2005. We anticipate a draft EIS late this winter or spring, with a final EIS to follow. This process, which is the last major step leading up to the Secretary's "two-part determination" and the Governor's concurrence, requires the Tribe to pay for the BIA's environmental contractor hired to prepare the EIS on the project.

Funding

We wish to emphasize that Warm Springs is paying for these efforts ourselves. Throughout the Tribe's nearly decade-long effort to address its worsening financial crisis through development of a casino on the Tribe's traditional lands along the Columbia River, the Tribe has utilized its own funds and resources. No management company or outside financial partner has been involved. To date, the Tribe has expended approximately \$10.7 million in tribal funds pursuing this project. To complete the fee-to-trust process, which would allow construction to begin, we expect to spend an additional \$10.3 million on the EIS and other planning expenses.

SECOND DISCUSSION DRAFT

As described above, our Tribe, the Oregon Governor, Cascade Locks and many surrounding communities and jurisdictions have invested great amounts of time, energy and scarce resources in fully complying with established processes thus far. Moreover, and perhaps unique among tribes, Warm Springs has followed this costly and time-consuming process relying solely on our own funds in an effort to produce a model partnership between the Tribe, State and local communities. As Congress this Session began to consider possible amendments to IGRA that might alter the Section 20 process we have been following, we have hoped that we would be permitted to see these processes through to the end, and that Congress will not deliver us a last minute fatal blow. However, the provisions of the second discussion draft virtually assure us precisely the last minute fatal blow we have feared.

The second discussion draft completely terminates the Section 20(b)(1)(A) process we have been following and relying upon for years. The statutory construction provisions in Section 2 of the draft appear to permit the continuation after the date of enactment of only those compacts that are "in effect" on that date. With no provision for continuation of any Section 20(b)(1)(A) process after that date, the draft places us in an impossible race to secure the Secretary's approval of our Compact, placing it into effect, before the draft's enactment. Interior has already changed the rules on us to preclude our Compact's consideration until the subject land is in trust. Given the potentially long time periods involving the EIS and completing the land-into-trust process, that is a race we would almost certainly lose. Such a change would be unfair and almost punitive. We ask that our treatment at the hands of Congress not be so harsh, and that legislation to revise Section 20 include a "grandfather" clause allowing projects such as ours, which is in our state, in our aboriginal and Treaty-reserved territory, and is based on a signed Compact with Oregon's Governor, to finish the process it started several years and many millions of dollars ago. If Congress is determined to end the Section 20(b)(1)(A) process, even though only three gaming operations have been authorized under this process in 17 years, it should in all fairness allow a project such as ours to finish the process under the existing rules.

CLOSING

Mr. Chairman, in closing, we would like to appeal to your Committee's sense of history and fairness in dealing with Indian tribes such as ours. This year we celebrate the 150th anniversary of the Treaty that moved our ancestors from the land along the Columbia River to our current Warm Springs Reservation. Although the history of relationships between the United States government and Indian tribes has not always been smooth, the people of the Warm Springs Reservation have sought to work cooperatively with our Federal partners on the basis of mutual trust. Together, over time, we have learned how to solve our problems by establishing mutual agreements and playing by the rules. Now this Committee's consideration of revisions to IGRA's Section 20 provides a modern opportunity to reinforce those timeless values of

reliability and fairness.

Accordingly, we urge changes in the second discussion draft so that any legislation addressing the off-reservation gaming process take good faith efforts such as ours into account, and permit us to complete the existing process. Our experience with our Cascade Locks site is proof to us that parties working diligently together in good faith can successfully resolve differences within the existing land-into-trust framework.

Thank you.